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UNITED STATES DISTRICT COURT

NORTHERN DISTRICT OF CALIFORNIA

EUNICE JOHNSON, individually, on behalf of)
all others similarly situated, and the general)
public,)

Plaintiff,)

v.)

TRIPLE LEAF TEA INC.,)

Defendant.)

CASE NO. 3:14-cv-01570-MMC

CLASS ACTION

**JOINT CASE MANAGEMENT
STATEMENT**

Date: March 20, 2015

Time: 10:30 a.m.

Courtroom: 7

Complaint Filed: April 4, 2014

1 The parties, Eunice Johnson ("Plaintiff") and Triple Leaf Tea ("Defendant") submit this
2 Joint Case Management Statement pursuant to this Court's October 31, 2014 Order (Dkt. 41) and
3 the upcoming Case Management Conference schedule for Friday, March 20, 2015. The parties
4 have met and conferred.

5 **1) JURISDICTION AND SERVICE**

6 Defendant was properly served.

7 PLAINTIFF:

8 Plaintiff maintains that this Court has personal jurisdiction over Defendant because
9 Defendant is headquartered in and has its principal place of business in San Francisco,
10 California. Pursuant to this Court's September 23, 2014 Order (Dkt. 33), Plaintiff has Article III
11 and statutory standing because she suffered an economic injury caused by Defendant's false and
12 misleading advertising. Plaintiff believes that all proper parties to this action have been served.
13 Plaintiff is unaware of any remaining issues concerning jurisdiction or venue.

14 DEFENDANT:

15 Defendant maintains that Plaintiff lacks standing because she has not suffered Article III
16 "injury in fact." There are no issues with respect to personal jurisdiction or venue. Defendant
17 does not agree that this Court has subject matter jurisdiction.

18 **2) FACTS**

19 Plaintiff filed a Class Action Complaint on April 4, 2014. Defendant filed a Motion to
20 Dismiss on May 16, 2014 (Dkt. 14). Plaintiff filed her Opposition to Plaintiff's Motion to
21 Dismiss on June 18, 2014 (Dkt. 20). On September 23, 2014, the Court DENIED Defendant's
22 Motion to Dismiss and/or Strike the Complaint in its entirety (Dkt. 33).

23 The Parties attended the Case Management Conference on October 31, 2014, during
24 which the Parties agreed to private mediation. The Parties attended an all-day mediation with
25 Hon. Judge Sabraw (Ret.) on February 3, 2015, and thereafter reached a tentative settlement.

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1 PLAINTIFF:

2 The claims on behalf of Plaintiff and the putative class arise out of Defendant's false,
3 deceptive, and otherwise unlawful marketing scheme and business acts and practices concerning
4 Triple Leaf's Senna Leaf tea products. For years, the Products have been and continues to be
5 marketed by the Defendant as weight loss teas that are also designed to support reduction of
6 excess body fats and accumulated toxins. However, the main ingredient in the Products is Cassia
7 Anjustifolia, or Senna Leaves, a stimulant laxative that does not assist in weight loss and actually
8 causes chronic bloating and constipation. Further, as a diet lasts longer than a ten day period of
9 time, the Products' marketing as weight loss teas is false or deceptive. Moreover, regular use of
10 the Product, which the front-of-pack marketing claims encourage, can cause dependence on
11 stimulant laxatives.

12 When purchasing the Product, Plaintiff was seeking a product that would help her lose
13 weight and excess fat in her body as Defendant promised, represented and warranted. Moreover,
14 Plaintiff sought a product that was generally healthy, as the Product promised to help eliminate
15 toxic waste from the body, but the Product is not generally healthy as it will ultimately cause
16 slowing of normal bowel function, loss of electrolytes from the body, and dependence on
17 stimulant laxatives, all of which will increase toxic waste in the body and not reduce it. Senna
18 has a laxative effect but is not a bulk forming laxative. Therefore, it should not be taken on a
19 regular basis at all. Further, calories are absorbed by the body within the small intestine by
20 means of the intestinal villi. The colon – which is where the Product has its laxative effect on the
21 body – is not where calories are taken up by the human body. Therefore, marketing the Product
22 as a weight loss tool is false and deceptive.

23 Thus, Plaintiff alleges Defendants' Senna Leaf weight loss tea Products are false or
24 deceptively advertised to the public. Plaintiff alleged she purchased and used the tea but it was
25 not as advertised for the reasons set forth above, and as set forth in more detail in the Complaint.

26 DEFENDANT:

27 Plaintiff purports to bring this putative class action lawsuit on behalf of consumer who
28 purchased Triple Leaf's "Dieter's Green Herbal Tea," "Ultra Slim Herbal Tea," and "Super

1 Slimming Herbal Tea” (collectively referred to as “the Teas”). Plaintiff alleges that she bought a
2 box of Dieter’s Green tea in Kansas City, Missouri in November 2012. She does not allege,
3 however, that she bought either the Ultra Slim Herbal Tea and/or Super Slimming Herbal Tea.
4 Plaintiff also fails to allege that she actually brewed and drank the tea.

5 The root of Plaintiff’s claims is that the Teas “contain no weight loss ingredients or fat
6 burners” and do not constitute “an effective treatment for weight loss or appetite suppression and
7 [do] not work as advertised.” Plaintiff also claims that Triple Leaf somehow “conceals the
8 dangers” of two ingredients contained in the Teas – senna leaf (*cassia angustfolia*) and Chinese
9 mallow (*malva verticillata*). According to Plaintiff, these alleged deficiencies resulted in the
10 Teas being “unlawful misbranded foods” for purposes of the Food, Drug, and Cosmetic Act
11 (“FDCA”) thereby violating California’s Sherman Law.

12 Defendant denies that any laws were violated and contend that Plaintiff’s claims lack
13 merit.

14 **3) LEGAL ISSUES**

15 Plaintiff asserts various state law claims including: the “unlawful” prong of California’s
16 Unfair Competition Law (Cal. Bus. & Prof. Code § 17200); the UCL’s “unfair” prong; the
17 UCL’s “fraudulent” prong; false and deceptive advertising under the False Advertising Law
18 (Bus. & Prof. Code § 17500); the Consumers Legal Remedies Act (Civ. Code § 1750); and
19 causes of action for breach of express and implied warranty.

20 **4) MOTIONS**

21 PLAINTIFF:

22 Plaintiff filed her Opposition to Plaintiff’s Motion to Dismiss on June 18, 2014 (Dkt. 20).
23 On September 23, 2014, the Court DENIED Defendant’s Motion to Dismiss and/or Strike the
24 Complaint in its entirety (Dkt. 33). Plaintiff is unaware of any pending motions. As the Parties
25 intend to settle this dispute, Plaintiff anticipates Motions for Preliminary and Final Approval of
26 the forthcoming Final Settlement Agreement.

1 Additionally, Plaintiff believes any remaining issues relating to discovery disputes may
2 be determined by motion. Plaintiff, however, intends to resolve discovery disputes informally,
3 and file such motion(s) only as a last resort.

4 DEFENDANT:

5 Defendant filed a motion to dismiss Plaintiff's complaint, which was set for hearing on
6 July 25, 2014 at 9:00 a.m. The Court vacated the hearing and took the motion to dismiss under
7 submission (Doc. No. 28). Should this case continue beyond the motion to dismiss stage,
8 Defendant intends to file a motion for summary judgment.

9 JOINT POSITION:

10 The parties agree to email a PDF version of any redacted briefs upon filing, in addition to
11 formal service of all papers and exhibits.

12 **5) AMENDMENT OF PLEADINGS**

13 PLAINTIFF:

14 As the Parties intend to settle this dispute, Plaintiff currently does not anticipate further
15 amendments to her pleadings. In the event the Parties cannot find agreement, Plaintiff reserves
16 the right to move to amend her complaint by, among other things, adding or substituting class
17 representatives and/or amending to include additional defendants, depending on facts obtained
18 through discovery in this case. In the event class certification is denied, Plaintiff intends to
19 continue the matter as an individual action and would amend the Complaint accordingly.

20 DEFENDANT:

21 The filing of amended pleadings will be dictated by the Court's order following
22 Defendant's pending motion to dismiss.

23 **6) EVIDENCE PRESERVATION**

24 Defendant and Plaintiff have each represented that steps have been taken to preserve
25 evidence relevant to this litigation.

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1 **7) DISCLOSURES**

2 Plaintiff and Defendant have fully complied with the Initial Disclosure requirements of
3 Fed. R. Civ. P. 26. Disclosures included information concerning the parties and persons likely to
4 have information about the products, images of the products and their labels used during the
5 putative class period, and damages information.

6 **8) DISCOVERY**

7 Plaintiff has propounded targeted discovery in the form of Interrogatories, Request for
8 Production and Request for Admissions. The parties have reviewed the ESI Guidelines regarding
9 electronically stored information and will meet and confer should the need arise to discuss
10 discovery. There are currently no discovery disputes.

11 **9) CLASS ACTIONS**

12 PLAINTIFF:

13 This case is a putative class action. Plaintiff anticipates filing a motion for preliminary
14 approval of a class action settlement within approximately 75 days of today's date. Plaintiff
15 requests the Court to set a date for a preliminary approval motion approximately 60 days from
16 the date of the CMC hearing, to encourage the Parties to continue to move forward in submitting
17 papers on the settlement in a timely fashion.

18 DEFENDANT:

19 Defendant agrees that this is a putative class action. Defendant respectfully requests that
20 the Court set the hearing date for the Motion for Preliminary Approval on June 19, 2015 and
21 Motion for Final Approval on October 23, 2015.

22 **10) RELATED CASES**

23 PLAINTIFF:

24 Plaintiff is unaware of any actions related to this action against Defendant. The
25 *Augustine* case is not related because it involves different parties and different, specific
26 advertising.

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1 DEFENDANT:

2 Plaintiff's Counsel has recently filed a similar case against another Tea manufacturer
3 asserting similar claims, which is venued in the Southern District of California. *Augustine v.*
4 *Natrol Products, Inc.* Case No. 13-CV-3129-H-DHB. The *Augustine* matter has been stayed due
5 to bankruptcy proceedings commenced by defendant Natrol. This case has not been related to
6 this case.

7 **11) RELIEF**

8 Plaintiff's complaint seeks the following relief:

- 9 • An order declaring this action to be a proper Class Action and requiring
10 Defendant to bear the costs of class notice;
- 11 • An order awarding declaratory and injunctive relief as permitted by law or equity,
12 including enjoining Defendant from continuing the alleged unlawful practices;
- 13 • An order awarding restitution and disgorgement of Defendant's revenues to
14 Plaintiff and the proposed Class members;
- 15 • An order compelling Defendant to engage in a corrective advertising campaign to
16 inform the public concerning the "true nature" of the Teas.
- 17 • An order awarding damages and punitive damages;
- 18 • An order awarding attorneys' fees and costs; and
- 19 • An order providing such further relief as this Court deems proper.

20 **12) SETTLEMENT AND ADR**

21 The Parties agreed to private mediation at the Case Management Conference on October
22 31, 2014 (Dkt. 41). Thereafter the Parties began exchanging targeted discovery requests to
23 enable Plaintiff's counsel to conduct due diligence in evaluating the case for possible settlement.

24 On February 3, 2015, the Parties participated in an all-day mediation with Honorable
25 Judge Sabraw (Ret.). Thereafter, the Parties managed to establish a framework for settlement,
26 but are still working on a final memorialized agreement. Setting deadlines at the CMC will assist
27 the parties in moving this matter toward resolution.

1 **13) CONSENT TO MAGISTRATE JUDGE**

2 The case has been assigned to Honorable Maxine M. Chesney for all proceedings in this
3 matter (Dkt. 11).

4 **14) OTHER REFERENCES**

5 None at this time.

6 **15) NARROWING OF ISSUES**

7 PLAINTIFF:

8 None at this time.

9 DEFENDANT:

10 Defendant will not stipulate that the Rule 23(a) element of numerosity is a “non-
11 contested element.” At present, the parties are not aware of any issues that can be narrowed by
12 agreement.

13 **16) EXPEDITED TRIAL PROCEDURE**

14 The parties do not believe this case can be handled on an expedited basis with
15 streamlined procedures.

16 **17) SCHEDULING**

17 PLAINTIFF:

18 Given the Parties’ intent to settle on a classwide basis, the Court should set the following
19 motion dates now, to ensure the speedy resolution of this case:

20 Motion for Preliminary Approval: May 15, 2015

21 Motion for Final Approval: September 18, 2015

22 Should the Parties not present a preliminary approval motion or stipulation to continue
23 the same by May 15, 2015, then the Court should, at that time, hold a conference to schedule
24 discovery related issues, dispositive motions, pretrial conference and trial.

25 DEFENDANT:

26 In light of the pending settlement, Triple Leaf respectfully requests that the Court set the
27 following dates for resolution of this case:
28

1 Motion for Preliminary Approval: June 19, 2015

2 Motion for Final Approval: October 23, 2015

3 Should the Parties not present a preliminary approval motion or stipulation to continue
4 the same by June 19, 2015, then the Court should, at that time, hold a conference to schedule
5 discovery related issues, dispositive motions, pretrial conference and trial.

6 **18) TRIAL**

7 The Parties agree that trial scheduling should be postponed for now. *See* Discussion in
8 Section 17, *Supra*.

9 **19) DISCLOSURE OF NON-PARTY INTERESTED ENTITIES OR PERSONS**

10 PLAINTIFF:

11 Plaintiff filed her Certificate of Interested Parties on July 18, 2014.

12 DEFENDANT:

13 Defendant filed a Certificate of Interested Parties on May 23, 2014.

14 **20) PROFESSIONAL CONDUCT**

15 All attorneys of record for the Parties involved have reviewed and understand the
16 Guidelines for Professional Conduct for the Northern District of California.

17 **21) OTHER MATTEERS**

18 None at this time

19 Dated: March 13, 2015

GORDON & REES LLP

20 By: /s/ Dion N. Cominos

21 DION N. COMINOS

22 RYAN B. POLK

Attorneys for Defendant

23 TRIPLE LEAF TEA, INC.

24 Dated: March 13, 2015

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25 By: /s/ Ronald A. Marron

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28 Class

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